IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.03.2007

CORAM:
THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.4239 of 2003

C.K. Ravindaran .. Petitioner

vs.

1 New Horizon Sugar Mills Limited
Represented by its General Manager
Ariyur
Pondicherry

2 The Presiding Officer
Labour Court
Pondicherry ..
Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus as stated therein.

For petitioner Mr. D. Bharatha Chakravarthy

For 1st respondent Ms. S. Vidya
for M/s. S. Ramasubramanian & Associates

R2 : Court

O R D E R

The petitioner, aggrieved by the order dated 01.07.2002, in CP NO. 33/2000 passed by the second respondent Labour Court, has filed this writ petition, seeking to quash the same and to direct the first respondent Management to pay him the death-cum-retirement gratuity (DCRG) as per the settlement dated 11.10.1995 between the first respondent Management and its workmen and also to pay him the bonus and ex-gratia payment for the accounting years 1998-99 in full and for the year 1999-2000 proportionate to the months of April and May 1999 at the same rate as was paid to the other workmen of the first respondent Management.

2. The petitioner was appointed in the first respondent mill on 24.09.1969 as a Draughtsman to prepare designs and drawing under the supervision of Deputy Chief Engineer. By an order of the first respondent, he was re-designated as Junior Engineer (Designs) sans any change in the grade, scale of pay and duties and responsibilities and he continued to perform the functions of a Draughtsman till his retirement. By an office order dated

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27.08.1996, his scale of pay was revised from Rs.1,700/- to Rs.3,350/- and he was subsequently transferred to work inside the factory to supervise the overhauling works, besides attending to the drawing office work whenever required, by an order dated 27.06.1997; but he was not having any decision-making or administrative power to control the workmen under him. The first respondent, by its order dated 22.09.1997, revised his pay in the scale of pay of Rs.4000-5550 and by an order dated 19.04.1999, he was superannuated on 11.05.1999.

3. On 11.10.1995, a settlement was entered into between the first respondent Management and its workmen under Section 12(3) of the Industrial Disputes Act, 1947 (in short "the Act") according to which each workman was required to contribute to the Death-cum-Retirement Gratuity (in short "DCRG") and the former agreed to pay a sum of Rs.30,000/- to each workman so contributing at the time of his retirement and thus, a total sum of Rs.994/- was recovered from the petitioner's salary till his retirement. On his retirement, he was paid only a sum of Rs.994/- and there was a balance of Rs.29,006/- payable to him as per the settlement. Further, the first respondent had declared a bonus of 8.33% and an ex-gratia of 19.67% for the accounting year 1998-99 by which the petitioner was entitled to receive Rs.11,760/- as bonus for the accounting year 1998-99 and proportionate bonus for the accounting year 1999-2000. As against these dues, he was paid only a sum of Rs.3,500/- towards full and final settlement of bonus for the accounting year 1998-99.

4. With his efforts to get his claims in vain, he filed a claim petition before the second respondent Labour Court under Section 33C(2) of the Act for determination and payment of the amount due to him and the said petition was dismissed by the second respondent Labour Court, vide its order dated 01.07.2002 on the ground that he cannot be termed as a workman and as such, the settlement is not applicable to the petitioner and consequently, he cannot claim the balance of Rs.29,004/- so also the bonus for the respective years. This order of the second respondent Labour Court is impugned in this writ petition.

5. The main ground of challenge in the writ petition is that though the petitioner was upgraded on various occasions, his nature of job remained the same and he was never playing a supervisory role, though designated as such and hence, the finding of the second respondent Labour Court that the petitioner cannot be termed to be a workman is perverse.

6. According to the first respondent, the petitioner was promoted on a number of occasions and his last promotion was as Supervisor in 'C' grade and he was performing supervisory duties in the factory by looking after the overhauling work in shop floor; on his superannuation, all his dues were settled which were accepted by him in full and final settlement of his claim by issuing a stamped receipt and since he was in the supervisory cadre, he was precluded from claiming any benefit under the Settlement which is applicable only to "workmen". It is the further case of the first respondent that the finding of the second respondent Labour Court is in no way infirmed since it has

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rightly come to the conclusion that the petitioner did not fall under the category of a "workman" and as such, not entitled to his claim.

7. Heard Mr. Bharatha Chakravarthy, learned counsel for the petitioner and Ms. S. Vidya for M/s. S. Ramasubramaniam & Associates, counsel for the first respondent.

8. The learned counsel for the petitioner would contend that the Labour Court, by accepting the averment of the first respondent without going into the nature of work performed by the petitioner, has come to an erroneous conclusion that the petitioner is not a workman, though he was all along performing the same duties of drawing designs and plans involving skilled and technical functions. In this connection, it would be his earnest submission that only the actual nature of work performed by an employee should be given preference rather than the designation offered to him, while deciding his status as to whether he is a workman or not. It would be his further argument that the first respondent did not contend with regard to the status of the petitioner while recovering Death-cum-Retirement Gratuity but only when paying the same to the petitioner, it contended that the petitioner did not fall under the category of a 'workman' and as such, this fluctuating stand of the first respondent is not justifiable.

9. In support of his contention that only the nature of duties and responsibilities performed by an employee has to be taken cognizance of and not his designation, while determining his status as a workman or not, the counsel for the petitioner would rely on a judgment of the Supreme Court reported in AIR (2002) SC 1724 in the case of Sharad Kumar v. Govt. of NCT of Delhi & others and the relevant para reads as under (para 29)

> "Testing the case in hand on the touchstone of the principles laid down in the decided cases, we have no hesitation to hold that the High Court was clearly in error in confirming the order of rejection of reference passed by the State Government merely taking note of the designation of the post held by the respondent i.e. Area Sales Executive. As noted earlier, determination of this question depends on the types of duties assigned to or discharged by the employee and not merely on the designation of the post held by him. We do not find that the State Government or even the High Court has made any attempt to go into the different types of duties discharged by the respondent with a view to ascertain whether he came within the meaning of Section 2(s) of the Act. The State Government, as noted earlier, merely considered the designation of the post held by him which is extraneous to the matters relevant for the purpose. From the appointment order dated 21/22 April, 1983 in which are enumerated certain duties which the appellant may be required to discharge, it cannot be held therefrom that he did not come within the first

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portion of the Section 2(s) of the Act. We are of the view that determination of the question requires materials including oral evidence will have to be considered. In such a matter, the State Government could not arrogate on to itself the power to adjudicate on the question and hold that the respondent was not a workman within the meaning of Section 2(s) of the Act, thereby terminating the proceedings prematurely. Such a matter should be decided by the Industrial Tribunal or Labour Court on the basis of the materials to be placed before it by the parties. Thus, the rejection order passed by the State Government is clearly erroneous and the order passed by the High Court maintaining the same is unsustainable."

10. Per contra, the counsel for the first respondent would contend that the petitioner's basic salary was fixed at Rs.3,200/- with effect from 01.09.1996 and the same was increased to Rs.4,200/- with effect from 01.09.1997 and he was allotted duties and responsibilities giving due consideration to his designation and the petitioner himself has admitted in his affidavit that he was an operator of higher grade and hence, the contention of the petitioner that he is a workman does not have legs to stand. The learned counsel for the first respondent would further contend that when the sum of Rs.994/- which was, due to a clerical error, recovered from the petitioner's salary towards DCRG, was returned to him, his claim that he is entitled to receive the balance amount of Rs.29,006/- is baseless and hence, should be brushed aside. Finally, the counsel for the first respondent would contend that the claim of the petitioner for bonus and exgratia on par with other workmen is not at all tenable particularly, when he had accepted a sum of Rs.3,500/- in full and final satisfaction of his claim towards bonus.

11. In support of her contention that the status of an employee has to be decided only as per Section 10(1) and not under 33C(2) of the Industrial Disputes Act, the learned counsel for the first respondent has relied on a First Bench judgment of this Court 1976 II LLJ 218 in the matter of R. Krishnaswami Reddiar, etc., etc. vs. Labour Court, Madurai & another etc., etc. and the relevant para reads as under:

"We are of the opinion that any incidental question which may be brought within the scope of Section 33C (2) will have to be inherently related to the problem of computation. But status is not one such question just as a defence when disputed, could not be decided under Section 33C(2). They are questions which have to be decided by raising industrial disputes under Section 10(1) of the Industrial Disputes Act."

12. With regard to her contention that it is only for the petitioner to prove his claim, the learned counsel for the first respondent has placed reliance on a judgment of this Court reported in 1964 II LLJ 86 in the matter of Rathinaswami Nadar

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(E.C.P.) vs. Labour Court, Madurai & another and the relevant portion reads as below:

> "It must be remembered that this is a claim which was put forward by the employee and normally, it is for the person putting forward the claim to establish the facts and circumstances supporting the claim"

13. The only short point involved in this case is whether the petitioner falls under the definition of a "workman" as contemplated under Section 2(s) of the Act which reads as follows:

> "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of , that dispute or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—
>
> i who is subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
>
> ii who is employed in the police service or as an officer or other employee of a prison; or
>
> iii who is employed mainly in a managerial or administrative capacity; or
>
> iv who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

14. To decide the above issue, it is necessary to take into consideration the materials placed by the petitioner to prove that he is a workman under Section 2(s) of the Act. From Ex.A1, appointment order marked before the Tribunal, it is clear that he was appointed as a Draughtsman with a basic pay of Rs.200-10-250-EB-10-300. This post was re-designated as Junior Engineer (Designs) by an office order dated 11.02.1991 marked as Ex.A.2, the scale of pay remaining the same. Further, as per the settlement reached between the employees and the first respondent,

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his pay was refixed at Rs.2,825/- with effect from 01.10.1993 and enhanced to Rs.3,200/- with effect from 01.09.1996. At the time of retirement, he was receiving a basic salary of Rs.4,200/-. From this, it is clear the petitioner who was working in the supervisory capacity was drawing more than Rs.1,600/-, the amount over which an employee should not draw if he is to be called as a "workman" as per Section 2(s) extracted above. Further, his nature of duties as Junior Engineer (Designs) such as supervising the overhauling work and his basic salary of Rs.4,200/- amply prove that his functions are of a managerial nature and he does not fall under the category of a workman as referred to in Section 2(s) of the Act. Also, the work of a Junior Engineer (Designs) is undoubtedly a skilled work and it is not a manual work. Thus, the logical reasoning given by the Labour Court that the petitioner is not a workman, based on the materials placed before it by the parties, is in conformity with the legal principles and there is no perversity in arriving at such a conclusion. His designation, salary drawn and the nature of duties and office orders are conclusive proof to show that the petitioner was in a supervisory capacity involving managerial or administrative task. Therefore, I am of the considered view that he is not a workman coming under the definition of Section 2(s) of the Act and as such, he cannot seek any relief which can be claimed only by a person in the status of a workman. In that view of the matter, this Court holds that the petitioner cannot claim DCRG which is applicable only to workmen.

15. Secondly, coming to the claim of the petitioner with regard to bonus and exgratia, I am not able to find any infirmity with the order of the Labour Court holding that it is untenable on the part of the petitioner to claim bonus and exgratia on par with workmen, when admittedly, the petitioner had acknowledged the receipt of a sum of Rs.3,500/- in full and final satisfaction of his claim for bonus.

Having regard to the facts and circumstances of the case, the submissions made by the counsel on either side and the judgments relied on by them and in view of the above findings, I am of the considered view that the writ petition does not deserve any consideration. Accordingly, it is dismissed without any order as to costs.

Cad

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Presiding Officer
Labour Court
Pondicherry

2. The Record Keeper, VR Section,
High Court, Madras

+ one cc to M/s. Sai Bharath and Ilan, Advocate sr no. 13785
+ one cc to M/s. S. Ramasubramanian, Associates, sr no. 14344

GV(Co)
NM(16.03.07)

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